



PUBLIC NOTICE

Federal Communications Commission
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DA 03-2638
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DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF BERKSHIRE TELEPHONE COMPANY TO FAIRPOINT COMMUNICATIONS, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-184

On July 23, 2003, Brian F. Kelly and the John E. Kelly Family Stock Trust (Lisa K. Thompson and Katherine M. Pesano, Trustees) (collectively, the Transferors) and FairPoint Communications, Inc. (FairPoint) and its wholly-owned subsidiary MJD Ventures, Inc. (MJD) (collectively, the Transferees) (together, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ for consent to transfer control of Berkshire Telephone Corporation (BTC) and its subsidiaries (including Berkshire Cable Corporation (BCC)) from BTC's current stockholders to MJD (and its parent company, FairPoint).²

Applicants assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63.03(b)(2)(iii) of the Commission's rules because the Applicants are incumbent, independent local exchange carriers (LECs) that have, in combination, fewer than two (2) percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping service areas. However, Applicants acknowledge that the BTC local exchange service area shares a common border of approximately seven miles in New York with one of FairPoint's subsidiaries, Taconic Telephone Corp. (TTC). Because the Applicants have adjacent service areas, this application is not subject to streamlined treatment.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants have also filed a transfer of control application related to international services. Applicants state that BTC intends to file applications for consent to transfer control of radio and paging licenses as well. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ *See* 47 C.F.R. § 63.03(b)(2)(iii); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517, 5534 (2002), para. 32.

BTC is a local exchange carrier that operates three local exchanges (the Kinderhook Niverville and Stuyvesant Falls exchanges) in the northwest portion of Columbia County in east central New York State. Its local exchange service area encompasses approximately 50 square miles and serves approximately 7,134 access lines (including digital subscriber lines (DSL)) in and around the communities of Kinderhook, Valatie, Niverville, Stuyvesant and Stuyvesant Falls, New York. BTC provides local exchange service, plus custom calling features and other optional local services. BCC, a wholly-owned subsidiary of BTC, provides competitive cable television service in Kinderhook, Valatie and Stuyvesant, New York. BCC d/b/a Berkshire Long Distance resells intrastate, interstate and international long distance toll services to households and businesses located within BTC's three local exchanges.

FairPoint is a telecommunication holding company that owns and operates 29 rural LECs in 18 states, including New York State. Its subsidiaries operate 142 local telephone exchanges serving approximately 243,408 access lines. FairPoint subsidiaries provide local exchange telephone services, enhanced calling features, long distance toll services, DSL services, Internet access, advanced data services and cable television services. MJD is an intermediate holding company within the FairPoint organization. It is responsible for oversight of 16 of FairPoint's local exchange subsidiaries, including TTC, a LEC that operates 11 local exchanges in portions of three New York State counties and one Massachusetts county. Its local exchange service area encompasses approximately 600 square miles and serves approximately 26,000 access lines in and around the communities of Berlin, Canaan, Chatham, Copake, Hillsdale, Millerton, Nassau, Pine Plains, Stephentown and West Lebanon, New York; and Hancock, Massachusetts.

Taconic TelCom Corp., a wholly-owned subsidiary of TTC, resells intrastate, interstate and international long distance toll services to households and businesses located within TTC's eleven local exchanges. Taconic Technology Corporation (TTech), another wholly-owned subsidiary of TTC, provides Internet access services to residents and businesses within TTC's local exchange service area and nearby portions of the Capital District around Albany.

The proposed transaction is a transfer of control of all of the issued and outstanding stock of BTC to MJD. FairPoint Berkshire Corporation (FBC), a New York corporation wholly-owned by MJD, will merge into and with BTC, with BTC remaining the surviving corporation. BTC will then redeem the stock of Brain F. Kelly, the John E. Kelly Family Stock Trust and the remaining pre-merger BTC stockholders. As a result, MJD will hold 100 percent of the stock of BTC, and will thereafter control BTC and BTC's subsidiaries (including BCC). FairPoint will be the ultimate controlling entity.

Applicants state that the proposed transaction is in the public interest because it will enhance competition by enabling BTC to gain the benefit of FairPoint's experience and knowledge regarding the provision of service to rural areas, improve its access to capital markets and affordable financing, and increase its ability to evaluate and implement state-of-the-art technologies as they develop. Applicants contend that the proposed transaction involves two very small LECs and has no potential to harm the public interest, or to impair competition in any

local exchange, long distance toll, cable television or other market regulated by the Commission. Finally, Applicants state that the regulated local exchange and exchange access services, rates and practices of BTC will not change as a result of the proposed transaction and that service will continue to be managed on a day-to-day basis by local employees.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁴ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁴ See 47 C.F.R. § 63.03(a).

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov;
- (4) Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: jemiller@fcc.gov;
- (5) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: iellis@fcc.gov;
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: ckillion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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